FILE COPY

Office - Supreme Court, U. S
FILED
MAY 7 1937
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1936.**

---

**No. [redacted] 42**

---

JAMES D. SMYTH, EXECUTOR OF THE ESTATE OF JAMES J. RANSOM, DECEASED,

*Petitioner,*

*vs.*

THE UNITED STATES.

---

**PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.**

---

ROBERT A. TAFT,
*Attorney for Petitioner.*

# INDEX.

## Subject Index.


| | Page |
|---|---|
| Petition: | |
| Caption | 1 |
| Judgment below | 1 |
| Statement of the case | 1 |
| Question presented | 2 |
| Reasons for the allowance of the writ | 3 |
| Conclusion | 5 |
| Brief | |
| Opinion below | 6 |
| Jurisdiction | 6 |
| Chronological statement of documents, statutes, proclamations and circulars | 6 |
| Argument | 15 |
| Summary: | |
| 1. The provisions of the bond and circular with respect to payment in gold coin are valid under the Perry decision, in spite of the legislation adopted by Congress | 15 |
| 2. The purported call on March 14, 1935, was void, because it was a call for payment in currency, and not in accord with the terms of the bond | 17 |
| 3. Regardless of the validity of the purported call, the running of interest on petitioner's bond did not cease June 15, 1935, because the United States was not ready and willing at that time, or at any time, to redeem the petitioner's bond in accordance with its terms | 19 |
| 4. The purported call issued on March 14, 1935, was void, because the Secretary of the Treasury had no authority to issue a call without further action by Congress | 23 |
| 5. The purported call issued on March 14, 1935, was void because forbidden by Section 731 of Title 31 of the United States Code (Act of March 18, 1869, 16 Stat. 1) | 24 |

CASES CITED.


| | Page |
|---|---|
| *Chicago, etc. Railroad Co.* v. *Pyne*, 30 Fed. 86 | 21 |
| *Corbett* v. *McClintic*, 17 Del. Chancery 165 | 20 |
| *The Dixie Terminal Company* v. *United States*, 83 Ct. Cls. 656 | 3, 4 |
| *Gordillo* v. *Weguelin*, 5 Chancery Division 287 | 21 |
| *Machen* v. *United States*, 87 F. (2d) 594 | 3, 18 |
| *Missouri Railroad Co.* v. *Union Trust Co.*, 156 N. Y. 592, 51 N. E. 309 | 21 |
| *Morgan* v. *United States*, 113 U. S. 476 | 4, 23 |
| *Perry* v. *United States*, 294 U. S. 330 | 3, 15, 24 |
| *Randolph* v. *Middleton*, 26 N. J. Eq. 543 | 21 |
| *Sterling* v. *Watson Co.*, 241 Pa. 105 | 20 |
| *United States* v. *Sherman*, 98 U. S. 565 | 23 |


STATUTES, PROCLAMATIONS, CIRCULARS AND ARTICLES.


| | |
|---|---|
| Act of April 24, 1917 (40 Stat. at L. 35, c. 4) | 10 |
| Emergency Banking Act (Act of March 9, 1933, 48 Stat. at L. 1, c. 1) | 11 |
| Agricultural Adjustment Act (Act of May 12, 1933, 48 Stat. at L. 52, c. 25) | 11 |
| Joint Resolution of June 5, 1933 (48 Stat. at L. 113, c. 48) | 11 |
| Gold Reserve Act of 1934 (Act of January 30, 1934, 48 Stat. at L. 340, c. 6) | 12 |
| Joint Resolution of August 27, 1935 (49 Stat. at L. 939, c. 780, § 2) | 14 |
| Act of March 14, 1900 (31 Stat. at L. 45, c. 41, § 1) | 10 |
| Act of March 18, 1869 (16 Stat. at L. 1, c. 1) | 15, 24 |
| Executive Order No. 6102, issued April 5, 1933 | 11 |
| Executive Order No. 6260, issued August 28, 1933 | 12 |
| Presidential Proclamation of January 31, 1934 (48 Stat. at L. 1730) | 12 |
| Note: 50 Harvard Law Review 986 | 23 |

SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1936.**

---

# No. 960

---

JAMES D. SMYTH, EXECUTOR OF THE ESTATE OF JAMES J. RANSOM, DECEASED,

*Petitioner,*

*vs.*

THE UNITED STATES.

---

## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

---

Your petitioner, James D. Smyth, as Executor of the Estate of James J. Ransom, deceased, prays that a writ of certiorari be issued to the Court of Claims of the United States to review the judgment of that court in the above entitled action, and respectfully shows to this Honorable Court:

### Judgment Below.

Judgment of the Court of Claims was entered on May 3, 1937.

### Statement of the Case.

Suit was instituted in the Court of Claims by the petitioner as the owner, holder for value, and bearer of a First

Liberty Loan Bond in the principal amount of $10,000.00, to recover $175.00, either in gold coin or legal tender currency on the interest coupon due December 15, 1935, attached to such bond. By its terms, the bond of the petitioner could be redeemed and paid at the pleasure of the United States on or after June 15, 1932, on any interest date or dates. By the express terms of the bond the principal and interest thereof were payable in United States gold coin of the standard of value as of the date of issue. On March 14, 1935, the Secretary of the Treasury purported to issue a notice of call for redemption of all First Liberty Loan Bonds on June 15, 1935, confirming such purported call in Treasury Department Circular Number 535 dated April 22, 1935.

On December 28, 1935, petitioner duly presented his bond to the respondent and demanded payment in gold dollars of the standard of value of the date of issuance, but the respondent refused to redeem the bond except by the payment of $10,000.00 in legal tender currency. The offer of the Government was refused by the petitioner, who thereafter on the same day presented the interest coupon due December 15, 1935, attached to said bond, and demanded payment of the amount thereof, $175.00, either in gold coin or legal tender currency. The respondent refused payment on the ground that the bond had been called for redemption on June 15, 1935. Upon such refusal by the respondent to pay the December 15, 1935, interest coupon, the petitioner filed suit on December 31, 1935, in the Court of Claims to recover in legal tender currency (not in gold coin) the amount of such interest coupon.

## Question Presented.

Whether interest ceases to run on a bond of the United States, payable in gold coin of the standard of value in effect June 15, 1917, when the Secretary of the Treasury

on March 14, 1935, issues a purported call for redemption on June 15, 1935, but refuses to pay the bond except in legal tender currency.

**Reasons for the Allowance of the Writ.**

(1) *The Court of Claims decided the question involved in this case in a way which does not give proper effect to the decision of this Court in the case of Perry* v. *United States,* 294 U. S. 330.

In that case this Court held unconstitutional the Joint Resolution of June 5, 1933, which attempted to provide that obligations of the United States, payable in gold coin, might be discharged by the payment of currency. It is true that the Court held that the bondholder failed to prove any damages from failure to pay gold—in short, that the remedy sought was defective although the legal right was unquestioned. In this case the bondholder does not seek payment in gold, but insists upon his right to receive interest on his bond until its maturity, unless the Government complies with its legal obligation to pay gold.

(2) *The decision of the Court of Claims is squarely in conflict with the decision of the Fourth Circuit Court of Appeals in the case of Machen* v. *United States,* 87 F. (2d) 594, *decided January* 15, 1937.

In the Machen case, Judge Parker, writing the opinion for the Court of Appeals, rejected the reasoning and conclusion of the Court of Claims in the case of *The Dixie Terminal Company* v. *United States,* 83 C. Cls. 656, involving an interest coupon on a Fourth Liberty Loan Bond. Judge Parker said, 87 F. (2d) 594 at 596:

> "The argument of the government and the decision of the Court of Claims in *Dixie Terminal Co.* v. *United States* — Ct. Cls. —, to which our attention is called, proceed upon the theory that the provision of

> the bond providing for notice, upon which interest is to cease and coupons subsequently maturing are to become void, is to be construed as though it were independent of the provision for redemption which it follows, i.e. that a notice is sufficient which states that the bonds will be redeemed on the named date, even though it does not say or mean to say that they will be redeemed in accordance with their terms. We think that the position is unsound and that, under the decision in the *Morgan case, supra* (*Morgan* v. *United States*, 113 U. S. 476), the provision as to notice must be construed as a part of the provision for redemption."

The Court of Claims in deciding the *Smyth* case recognized this conflict with the Circuit Court of Appeals for the Fourth Circuit. In the course of the opinion, Judge Littleton states (R. 20):

> "This question was presented and decided by this court November 9, 1936, in *Dixie Terminal Company* v. *United States*, 83 C. Cls. 656. Since that decision the Circuit Court of Appeals for the Fourth Circuit in *Machen* v. *United States*, 87 F. (2d) 594, held that the owner of a First Liberty Loan 3½% gold bond was entitled to recover interest subsequent to the date on which the bonds were called for redemption by reason of the Government's refusal to pay the bonds in gold coin. Substantially the same reasons given by the court for its decision in the *Machen case* were urged by plaintiff and considered by this court in *Dixie Terminal Company* v. *United States, supra*. We are not persuaded by the opinion of the Circuit Court of Appeals that the reasoning and conclusion of this court in the *Dixie Terminal Company case* were erroneous."

(3) *The question raised by this case is of great public and general interest.*

After the passage of the Joint Resolution of June 5, 1933, and before and after the decision of this Court in the Perry case, the Secretary of the Treasury has attempted to

call all gold-clause bonds which could be called in advance of their maturity, amounting to more than eight billion dollars. The list includes:

| | |
|---|---|
| Fourth Liberty Loan Bonds called for April 15, 1934 | $1,875,000,000 |
| Fourth Liberty Loan Bonds called for October 15, 1934 | 1,250,000,000 |
| Fourth Liberty Loan Bonds called for April 15, 1935 | 1,870,000,000 |
| Fourth Liberty Loan Bonds called for October 15, 1935 | 1,250,000,000 |
| First Liberty Loan Bonds called for June 15, 1935 | 1,929,915,000 |
| 2% Consols of 1930 called for July 1, 1935 | 599,724,000 |
| 2% Panama Canal Bonds called for August 1, 1935 | 74,901,000 |
| Total | $8,849,540,000 |

Other such gold-clause bonds are outstanding, not callable at this time, but callable in the future, an attempt to call which may be made. The question involves directly the credit of the United States and the sanctity of its contracts. It involves a construction of various statutes of the United States relating to the calling of bonds which have never been construed. The question raised herein has never been passed upon by this Court; its character demands that it should be.

**Conclusion.**

For the reasons herein set forth, it is respectfully submitted that this petition should be granted.

ROBERT A. TAFT,
*Attorney for Petitioner.*

## BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

### Opinion Below.

One opinion was delivered by the Court of Claims. It was written by Judge Littleton and filed May 3, 1937. It appears at page 19 of the Record, but is not yet reported.

### Jurisdiction.

The jurisdiction of this Court is invoked under Section 3 of the Act of February 13, 1925, c. 229 (43 Stat. 939, 28 U. S. C. A. § 288).

The judgment of the Court of Claims was entered on May 3, 1937. The petition herein was filed on May 7, 1937.

### Chronological Statement of Documents, Statutes, Proclamations and Circulars Involved.

Petitioner is the owner and holder for value of a United States First Liberty Loan Bond reading as follows:

1932-1947 6670.
Act Approved April 24, 1917.

LIBERTY LOAN OF 1917.

THE UNITED STATES OF AMERICA.

For value Received Promises to pay to the Bearer the sum of

Ten Thousand Dollars

on the 15th day of June, 1947, with interest at the rate of three and one-half per centum per annum payable semi-annually on December 15 and June 15 in each year until the principal hereof shall be payable, upon presentation and surrender of the interest coupons hereto attached as they severally mature. The principal and interest of this bond shall be payable in United States

gold coin of the present standard of value, and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority. This bond shall not bear the circulation privilege. This bond is one of a series of $2,000,000,000, principal amount of bonds, of an issue of $5,000,000,000 authorized by an Act of Congress entitled "An Act to authorize an issue of bonds to meet expenditures for the national security and defense, and, for the purpose of assisting in the prosecution of the war, to extend credit to foreign governments and for other purposes," approved April 24, 1917. Bonds of different denominations and coupon and registered bonds, of said series, are interchangeable, in equal principal amounts, under regulations of the Treasury Department, and upon payment, if the Secretary of the Treasury shall require, of a charge not exceeding $1 for each new bond issued. All or any of the bonds of the series of which this is one may be redeemed and paid at the pleasure of the United States on or after June 15, 1932, on any semi-annual interest payment date or dates, at the face value thereof and interest accrued at the date of redemption, on notice published at least three months prior to the redemption date, and published thereafter from time to time during said three months period as the Secretary of the Treasury shall direct. If in any case less than all of the bonds of said series are to be redeemed, the bonds to be redeemed will be determined by lot by such method as may be prescribed by the Secretary of the Treasury. From the date of redemption designated in any such notice interest on the bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void. If any subsequent series of bonds (not including United States certificates of indebtedness and other short term obligations) shall be issued by the United States at a higher rate of interest than three and one-half per centum per annum before the termination of the war

between the United States and the Imperial German Government, the date of such termination to be fixed by proclamation of the President of the United States, the holder hereof shall have the privilege, at any time within six months after the issue of bonds of such subsequent series, the date of such issue to be fixed by prior public announcement by the Secretary of the Treasury, of converting this bond at par, upon presentation and surrender hereof with all unmatured coupons at the Treasury Department, Washington, or at such other agencies as the Secretary of the Treasury may hereafter designate for the purpose, and upon adjustment of accrued interest to the date of conversion, into an equal par amount of bonds bearing such higher rate of interest, and substantially identical with the bonds of such subsequent series except that the bonds issued upon such conversion shall be identical with the bonds of the present series as to maturity of principal and interest, and terms of redemption.

6670.

Washington, D. C., June 15, 1917.

W. G. McAdoo,
*Secretary of the Treasury.*

Recorded —— Examined ——.

Houston B. Teehee,
*Register of the Treasury.*"

The interest coupon attached to petitioner's bond, payable December 15, 1935, reads as follows:

"The United States of America

Will pay to bearer One Hundred and Seventy-Five Dollars $175.00 for six months' interest due on the fifteenth day of Dec., 1935, on $10,000 3½ per cent bond of Liberty Loan of 1917.

Houston B. Teehee,
6670. *Register of the Treasury.*"

The relevant portion of Treasury Department Circular Number 78, under which petitioner's bond was issued, reads:

1917
Department Circular No. 78.

"TREASURY DEPARTMENT,
Office of the Secretary,
Washington, May 14, 1917.

Loans and Currency.

The Secretary of the Treasury invites subscriptions at par and accrued interest from the people of the United States of America for $2,000,000,000 of the 15/30 Year 3½ Per Cent Gold Bonds of an issue authorized by Act of Congress approved April 24, 1917. * * *

* * * The bonds will be dated June 15, 1917, and will bear interest at the rate of 3½ per centum per annum from that date, payable semi-annually on December 15 and June 15. The bonds will mature June 15, 1947, but the issue may be redeemed on or after June 15, 1932, in whole or in part, at par and accrued interest, on three months published notice, on any interest day; in case of partial redemption the bonds to be redeemed to be determined by lot by such method as may be prescribed by the Secretary of the Treasury. The principal and interest of the bonds will be payable in United States gold coin of the present standard of value, and the bonds will be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States or its possessions, or by any State or local taxing authorities. * * *

W. G. MCADOO,
*Secretary of the Treasury.*"

First Liberty Loan Bonds were issued under the Act of April 24, 1917 (Ch. 4, sec. 1, 40 Stat. 35), the pertinent provisions of which read as follows:

> "The Secretary of the Treasury, with the approval of the President, is hereby authorized to borrow, from time to time, on the credit of the United States for the purposes of this Act, and to meet expenditures authorized for the national security and defense and other public purposes authorized by law not exceeding in the aggregate $5,000,000,000, exclusive of the sums authorized by section four of this Act, and to issue therefor bonds of the United States.
>
> "The bonds herein authorized shall be in such form and subject to such terms and conditions of issue, conversion, redemption, maturities, payment, and rate and time of payment of interest, not exceeding three and one-half per centum per annum, as the Secretary of the Treasury may prescribe. The principal and interest thereof shall be payable in United States gold coin of the present standard of value and shall be exempt, both as to principal and interest, from all taxation, except estate or inheritance taxes, imposed by authority of the United States, or its possessions, or by any State or local taxing authority; but such bonds shall not bear the circulation privilege."

At the time of passage of the Act of April 24, 1917, and at the time the First Liberty Loan Bonds were issued, there was in effect the Act of March 14, 1900 (31 Stat. at L. 45, c. 41, § 1), defining the gold content of the dollar, and reading as follows:

> "The dollar consisting of twenty-five and eight-tenths grains of gold nine-tenths fine shall be the standard unit of value, and all forms of money issued or coined by the United States shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of the Treasury to maintain such parity."

Under the authority of the Emergency Banking Act, passed on March 9, 1933, the President on April 5, 1933, issued Executive Order No. 6102, prohibiting the hoarding of gold, and requiring all persons to deliver all gold coin, gold bullion, and gold certificates owned or acquired by them to the Government, and accept legal tender currency therefor.

On May 12, 1933, Congress passed, and the President approved, the Agricultural Adjustment Act of May 12, 1933, authorizing the President, among other things, to reduce the gold content of the dollar.

On June 5, 1933, the Congress of the United States adopted a Joint Resolution (48 Stat. at L. 113, c. 48, U. S. C., Title 31, § 463), which reads as follows:

"Provision for payment of obligations in gold prohibited; uniformity in value of coins and currencies.

(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States, is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this section, the term 'obligation' means an obligation (including every obligation of and

to the United States, excepting currency) payable in money of the United States; and the term 'coin or currency' means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve Banks and national banking associations."

On August 28, 1933, the President promulgated Executive Order No. 6260, requiring every person owning gold coin, gold bullion, or gold certificates to make a return to the Secretary of the Treasury, and prohibiting the acquisition of any such gold without license and the holding of any such gold without license after thirty days from the date of the order, under penalty of fine and imprisonment.

On January 30, 1934, the Gold Reserve Act of 1934 (Act of January 30, 1934, 48 Stat. at L. 340, c. 6) became law. Section 5 of such Act reads:

"No gold shall hereafter be coined, and no gold coin shall hereafter be paid out or delivered by the United States: Provided, however, That coinage may continue to be executed by the mints of the United States for foreign countries in accordance with the Act of January 29, 1874 (U. S. C. Title 31, Sec. 367). All gold coin of the United States shall be withdrawn from circulation, and, together with all other gold owned by the United States, shall be formed into bars of such weights and degrees of fineness as the Secretary of the Treasury may direct."

On January 31, 1934, the President issued a Proclamation (48 Stat. at L. Part 2, page 1730), the relevant provisions of which are:

"Now, therefore, be it known that I, Franklin D. Roosevelt, President of the United States, by virtue of the authority vested in me by section 43, title III of said act of May 12, 1933, as amended; and by virtue of all other authority vested in me, do hereby proclaim, order, direct, declare, and fix the weight of the gold

dollar to be 15-5/21 grains nine-tenths fine, from and after the date and hour of this proclamation. The weight of the silver dollar is not altered or affected in any manner by reason of this proclamation."

On March 14, 1935, the Secretary of the Treasury purported to issue a notice of call for redemption of the petitioner's bond. This notice was later set forth in Treasury Department Circular Number 535, the pertinent part of which reads as follows:

"REDEMPTION OF FIRST LIBERTY LOAN BONDS

1935,
Department Circular No. 535.

TREASURY DEPARTMENT,
Office of the Secretary,
Washington, April 22, 1935.

Public Debt Service.

To Holders of First Liberty Loan Bonds of 1932-47, and Others Concerned:

I. Notice of Call for Redemption Before Maturity.

On March 14, 1935, the following public notice of call for redemption was given:

To Holders of First Liberty Loan Bonds of 1932-47, and Others Concerned:

Public notice is hereby given:

1. All outstanding First Liberty Loan Bonds of 1932-47 are hereby called for redemption on June 15, 1935. The various issues of First Liberty Loan bonds (all of which are included in this call) are as follows:

First Liberty Loan 3½ percent bonds of 1932-47 (First 3½'s) dated June 15, 1917;

First Liberty Loan Converted 4 percent bonds of 1932-47 (First 4's), dated November 15, 1917;

First Liberty Loan Converted 4¼ percent bonds of 1932-47 (First 4½'s), dated May 9, 1918; and

First Liberty Loan Second Converted 4¼ percent bonds of 1932-47 (First-Second 4¼'s) dated October 24, 1918.

2. Interest on all such outstanding First Liberty Loan bonds will cease on said redemption date, June 15, 1935.

HENRY MORGENTHAU, JR.,
*Secretary of the Treasury.*

Treasury Department, Washington, March 14, 1935."

On August 27, 1935, Congress adopted a Joint Resolution withdrawing the consent of the United States to the assertion against it of any right, privilege or power "upon any gold-clause securities of the United States, or for interest thereon." Since this action was taken after the decision of this Court that the Government's obligation to pay gold was valid, this Joint Resolution is clearly a reaffirmation of the Government's refusal to pay gold, and of its intention to redeem the called bonds in currency only. However, the Resolution expressly provides that the section shall not apply "to any proceeding referred to in this section in which no claim is made for payment or credit in an amount in excess of the face or nominal value in dollars of the securities, coins or currencies of the United States involved in such proceeding." Since this and similar suits only claim the face or nominal value in dollars of the coupon sued upon, the Resolution does not apply in any way to this kind of a suit.

Petitioner's bond was presented for payment on December 28, 1935, and payment demanded in gold coin in accordance with its terms. The respondent refused to pay gold on the ground that the Treasury was forbidden to pay out gold; and refused to redeem the bond except in legal tender currency. Thereupon, petitioner presented the interest coupon

due December 15, 1935, on which this suit is brought, and demanded payment either in gold coin or in legal tender currency. Payment was refused on the ground that interest had ceased to run on June 15, 1935.

## ARGUMENT.

### Summary.

1. THE PROVISIONS OF THE BOND AND CIRCULAR WITH RESPECT TO PAYMENT IN GOLD COIN ARE VALID UNDER THE PERRY DECISION, IN SPITE OF THE LEGISLATION ADOPTED BY CONGRESS.

2. THE PURPORTED CALL ON MARCH 14, 1935, WAS VOID, BECAUSE IT WAS A CALL FOR PAYMENT IN CURRENCY, AND NOT IN ACCORD WITH THE TERMS OF THE BOND.

3. REGARDLESS OF THE VALIDITY OF THE PURPORTED CALL, THE RUNNING OF INTEREST ON PETITIONER'S BOND DID NOT CEASE ON JUNE 15, 1935, BECAUSE THE UNITED STATES WAS NOT READY AND WILLING AT THAT TIME, OR AT ANY TIME, TO REDEEM THE PETITIONER'S BOND IN ACCORDANCE WITH ITS TERMS.

4. THE PURPORTED CALL ISSUED ON MARCH 14, 1935, WAS VOID, BECAUSE THE SECRETARY OF THE TREASURY HAD NO AUTHORITY TO ISSUE A CALL WITHOUT FURTHER ACTION BY CONGRESS.

5. THE PURPORTED CALL ISSUED ON MARCH 14, 1935, WAS VOID BECAUSE FORBIDDEN BY SECTION 731 OF TITLE 31 OF THE UNITED STATES CODE (ACT OF MARCH 18, 1869, 16, STAT. 1).

### 1. The provisions of the bond and circular with respect to payment in gold coin are valid under the Perry decision, in spite of the legislation adopted by Congress.

In the case of *Perry* v. *United States*, 294 U. S. 330, this Court held that the Joint Resolution of June 5, 1933, insofar as it attempted to override the obligation to pay in gold coin created by the Fourth Liberty Loan Bonds, went beyond the

congressional power. Chief Justice Hughes, delivering the opinion of the Court, said:

> "The Constitution gives to the Congress the power to borrow money on the credit of the United States, an unqualified power, a power *vital to the* Government—upon which in an extremity its way life may depend. The binding quality of the promise of the United States is of the essence of the credit which is so pledged. Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy these obligations. The fact that the United States may not be sued without its consent is a matter of procedure which does not affect the legal and binding character of its contracts. While the Congress is under no duty to provide remedies through the courts, the contractual obligation still exists and despite infirmities of procedure, remains binding upon the conscience of the sovereign."

In view of this decision there can be no doubt that the Government was obligated to pay the petitioner's bond in gold coin of the former standard of value. The lack of remedy and failure of proof found to exist in the *Perry* case is not material here, because the petitioner is not suing for gold, and is not seeking damages for failure to pay gold, but is merely claiming the right to interest until maturity, or until the bond is called and paid in accordance with the admitted obligation of the Government. Although the Government is legally and morally obligated to pay this bond in gold, it is now trying to redeem the bond, and to pay that bond immediately in a depreciated currency. If the Government had to pay the bond in gold, it would never have called the bond. It is only because it desires to take advantage of its repudiation, and because of the difficulty of the bondholder securing any remedy against that repudiation, that the effort is made to pay in advance of maturity. It may be

that at maturity, if the Government maintains its position, and no further change is made in the monetary policy or the value of gold, the petitioner will have to accept currency in payment of the bond, but in the meantime we submit that it may collect interest in legal tender currency, unless the Government is willing to redeem the bond in accordance with its terms.

**2. The purported call on March 14, 1935, was void, because it was a call for payment in currency, and not in accord with the terms of the bond.**

The purported call for redemption issued by the Secretary of the Treasury on March 14, 1935, did not state in what medium the bonds would be redeemed or paid on June 15, 1935. But under the legislation in effect on March 14, 1935, there can be no question that the purported call was one for redemption in currency and not in gold. A series of legislative acts, presidential proclamations, and executive orders had been climaxed by the adoption of the Gold Reserve Act of 1934, which expressly prohibited the Secretary of the Treasury from paying out gold. As on March 14, 1935, it was illegal for the Secretary of the Treasury to pay out gold, it was certainly illegal for him to call any bonds for payment in gold. The Secretary of the Treasury, of course, was entirely subject to the will of Congress. If he had any authority to call bonds in gold, it existed under the statutes of Congress, and any such authority was revoked and ceased to exist upon adoption of the Gold Reserve Act of 1934. The call, therefore, can only be construed as a call for payment in currency.

The Government was obliged to pay its bonds in gold under the holding of this Court in the *Perry* case. A call for payment in currency was just as void and ineffectual to stop the running of interest as a call for payment of the

bond by paying fifty per cent of its face amount, or a notice of redemption in real estate or corporate stocks or silver bullion. This call must certainly be interpreted in the light of the existing statutes, and so interpreted it was a direct notice from the Government that it desired and intended to redeem the bonds in legal-tender currency and not in accordance with their terms.

This is no imaginary argument. When the call was issued, everybody in the United States knew exactly what was intended. Congress had repeatedly declared its intention of abandoning gold and paying in currency; it had gone further and forbidden the paying out of gold. No official of the Government, no holder of any bond, had the slightest idea that the notice of call meant anything except a call to pay in currency. The Secretary of the Treasury would never have called the bonds if he had had the slightest expectation of having to pay in gold.

Our position is supported by the opinion of the Circuit Court of Appeals for the Fourth Circuit in the case of *Machen* v. *United States of America*, 87 F. (2d) 594, at 597. Judge Parker said:

> "It would hardly be contended that a notice to the effect that the Government would redeem the bonds at 59 cents on the dollar would be a sufficient notice under the bond to stop the running of interest and avoid the subsequently maturing coupons; but it will be seen that this is precisely what the notice as published means when the acts of Congress and the presidential proclamation affecting the currency are read into it, and when it is remembered that Congress is without power to abrogate the gold clause as contained in obligations of the Government. * * *
>
> "It follows that, because of the legislation and the presidential proclamation to which we have referred, the Secretary of the Treasury was without power, both at the time of the publication of the notice and at the time fixed for redemption, either to pay gold on the

gold clause bonds or to pay in paper money the value of the gold which they promised. He was consequently without power under the law to redeem these gold clause bonds at their face value; and the notice of redemption which he issued must be construed in the light of this lack of power."

**3. Regardless of the validity of the purported call, the running of interest on petitioner's bond did not cease on June 15, 1935, because the United States was not ready and willing at that time, or at any time, to redeem the petitioner's bond in accordance with its terms.**

The Government relies on that sentence in the bond which states: "From the date of redemption designated in any such notice, interest on bonds called for redemption shall cease, and all coupons thereon maturing after said date shall be void." But surely this does not mean that interest shall cease on the mere issue of a call without intention or ability to redeem the bonds on the call date. Analyzing the situation, it would appear that interest on called bonds ceases (1) if proper notice of redemption is given, and (2) if on presentation the bond is paid in accordance with its terms, or would be so paid if presented. It can hardly be contended that the call itself is the only condition upon which interest ceases. If a corporation calls bonds, and then fails to have the money on hand to redeem the bonds in accordance with the call, the holder of such bonds surely has the option of retaining his bonds until maturity and collecting interest. It is possible that he also has the option of availing himself of the terms of the call, and suing for immediate payment, on the ground that the debtor has estopped itself from denying the validity of the call. The necessary and logical conclusion from the Government's position is that under the terms of the bond the Government could call a bond without the slightest intention of paying it,

and thereby cause interest to stop running. In the *Perry* case, this Court insisted on the sacredness of the Government's obligations. The construction of the obligation insisted on by the Government would enable it to cancel its sacred obligations.

In the case of *Sterling* v. *H. F. Watson Company,* 241 Pa. 105, 88 Atl. 297 (1913), the defendant attempted to call its preferred stock by the payment of its par value and accrued dividends, which it was entitled to do, but attempted to deduct from the accrued dividends the par value of a twenty-five per cent stock dividend which had been distributed eight years before. The stockholder sued to restrain the company from stopping dividends after the call date, and from refusing to transfer the stockholder's stock. The Supreme Court of Pennsylvania held that the twenty-five per cent stock dividend could not be considered under the terms of the preferred stock redemption clause, and granted the stockholder's petition, requiring the company to treat the plaintiff as a stockholder by transferring his stock, and to continue the payment of semi-annual dividends until a call was issued strictly in accordance with the terms of the redemption clause.

In *Corbett, Executrix,* v. *McClintic-Marshall Corporation,* 17 Delaware Chancery 165 (1930), the directors of the company exercised their charter right to redeem complainant's preferred stock, but complainant contended that the price at which they proposed to redeem was not the correct price. On demurrer, the Chancellor held that the petition stated a proper cause of action, but that the complainant was not entitled to insist on cash redemption at the higher price which she claimed, because this was within the discretion of the board of directors, a discretion which they had not exercised. The court held, however, that she was entitled, if she proved her case, to retain the status of a preferred stockholder. The court said, on page 171:

> "In view of the fact that the bill shows that the defendant has notified the complainant in substance that she is to be denied the status of a preferred stockholder in the future, the nature of the case, if the complainant be right in her claims touching the alleged illegality of the proposed redemption, requires a decree that though she cannot on the facts alleged enforce a redemption in accordance with her specific prayers, yet the defendant is bound to treat her as a preferred stockholder until proper redemption of her stock has been effected."

It is well settled that holders of bonds without a call provision cannot be made to accept payment in advance of maturity; *Chicago, etc. Railroad Co.* v. *Pyne,* 30 Fed. 86; *Missouri Railroad Co.* v. *Union Trust Co.,* 156 N. Y. 592, 51 N. E. 309. A statute providing that payment must be accepted before maturity is unconstitutional; *Randolph* v. *Middleton,* 26 N. J. Equity 543. Surely an effective call cannot be issued unless it is followed by a tender of the money either to a trustee or paying agent in the case of a private corporation, or direct to the bondholder in the case of the United States. As the Court of Appeals of New York said, in the case of *Missouri Railroad Co.* v. *Union Trust Company:*

> "They (the bondholders) have the right to have their bonds redeemed only according to the contract, and unless they are so redeemed, to hold them and draw interest upon them until the day of payment shall arrive."

We respectfully call the court's attention to the English case of *Gordillo* v. *Weguelin,* 5 Chancery Division 287 (1877), in which the question of cessation of interest was discussed. In that case a mortgage indenture provided that the debtor would pay interest and five per cent of the principal sum semi-annually. Provision was made that a certain amount of bonds should be drawn for redemption on May

first and November first of each year, to be redeemable on the following June first and December first, respectively. The indenture then provided: "but no interest shall be payable on any drawn bond after the date fixed for its redemption." The debtor having defaulted, the trustees took possession after certain bonds had been drawn and called, but before they had been redeemed. The question arose whether the holders of bonds drawn for redemption, but whose bonds the trustee was unable to pay, were entitled equally with holders of undrawn bonds to receive interest. The court held, despite the words quoted above, that interest continued to accrue on the drawn bonds, because they had not been paid on the date fixed for redemption, and that such interest had the same status under the terms of a deed of trust as interest on the undrawn bonds. Lord Justice James said:

> "I am of opinion that upon the whole deed what was intended was that interest should run until the bond was paid, or until it was payable according to the terms of the deed, that is *de facto* payable out of funds provided for that purpose. When the bonds were in truth payable, not payable in the sense of the money being recoverable in an action at law, or anything of that kind, but payable by reason of the fund being provided for the purpose of paying them, either in the hands of the contractors or received by the trustees, then the interest would cease, and until it was so payable in truth and in fact, as well as in legal right of action, the interest runs."

While the petitioner's bond provided that from the date of redemption designated in any notice of call, interest on the called bonds should cease, yet the bond also contained the expressed provision that "all or any of the bonds of the series of which this is one, may be redeemed *and paid* (italics ours) * * *." Certainly this provision for redemption and payment would not have been inserted in the

bond if it were the intention of the parties that interest should cease upon a date set for redemption, regardless of the willingness and ability of the United States to redeem. It is undoubtedly true that when the bond was drafted no one considered the possibility of repudiation by the United States and that consequently no provision was made in the bond to cover such a contingency, for as stated by Mr. Justice Strong in *United States* v. *Sherman*, 98 U. S. 565:

> "Delay or default cannot be attributed to the government. It is presumed to be always ready to pay what it owes."

But as is pointed out in 50 *Harvard Law Review*, 986, the interpretation of the Circuit Court of Appeals in the *Machen* case is more in accord with the intent of the parties. The Liberty Bonds drafted by officials of the Government should be construed most strongly against it. No one purchasing a Liberty Bond considered the possibility of the United States repudiating its obligations.

**4. The purported call issued on March 14, 1935, was void, because the Secretary of the Treasury had no authority to issue a call without further action by Congress.**

As pointed out on page 10, the First Liberty Loan Act authorized the Secretary of the Treasury to prescribe the terms of redemption of bonds issued under such act. Under such broad authority, the Secretary of the Treasury might have prescribed any one of several methods for issuing a notice of call. He actually did prescribe that the First Liberty Loan Bonds should be redeemable at the pleasure of the United States. In the case of *Morgan* v. *United States*, 113 U. S. 476, Mr. Justice Matthews, writing the opinion for this Court, referred to the provision as to calling bonds there involved, and stated:

> "The pleasure of the Government to redeem them or any part of them, of course, could only be declared by

law. Provision to this effect was made by the Act of July 14, 1870."

We respectfully submit that the conclusion of this Court in that case was correct. There is no more reason why the pleasure of the Secretary of the Treasury should be the pleasure of the United States than the pleasure of the President, or of the Vice-President, or any other officer of the Government. The redemption of bonds is a major financial transaction, requiring the consideration of Congress. The Secretary of the Treasury Department, between October 12, 1933, and August 1, 1935, determined to call nearly nine billion dollars in bonds payable in gold, at a time when the terms of the bonds could not be complied with. The policy followed involved a repudiation by the Government of its solemn obligations declared to be such by this Court in the case of *Perry* v. *United States*, 294 U. S. 330. Certainly no one would maintain that an individual, holding an appointed office in a government founded on the theory of popular representation and control, would have the right to obligate the country for nine billion dollars. We submit that he has no greater right to exercise the pleasure of the United States in repudiating obligations incurred on the authorization of Congress.

**5. The purported call issued on March 14, 1935, was void because forbidden by Section 731 of Title 31 of the United States Code (Act of March 18, 1869, 16 Stat. 1).**

This Section 731 provides:

> "None of the interest-bearing obligations not already due shall be redeemed or paid before maturity, unless at such time United States notes are convertible into coin at the option of the holder, or unless at such time bonds of the United States bearing a lower rate of interest than the bonds to be redeemed can be sold at par in coin."

The reason for the original passage of this law was obviously to prevent the Government from doing just what it is attempting to do now—paying off its obligations to its bondholders in a depreciated currency. United States notes, or "green-backs," were, of course, at a considerable discount from gold in 1869, and were not redeemable in gold or silver coin at that time. In order to protect the bondholders, Congress provided that none of the interest-bearing obligations should be redeemed or paid before maturity as long as United States notes were not convertible into coin at the option of the holder. Neither on March 4, 1933, nor at any subsequent date have United States notes been convertible into coin at the option of the holder. The Government, and not the holder, has the option, and it may pay out currency of any kind for any United States notes presented.

The proviso at the end of Section 731 was intended to permit the redemption of bonds if the Government is in a position to sell its bonds and receive gold for them, even though they bear a lower rate of interest. If the bonds bearing a lower rate of interest can only be sold for currency, then no call can be made. It is obvious that Government Bonds, when this call was issued in 1935, could not be sold for gold coin. There was no gold coin except in minor hoards, and if anyone could lawfully have obtained gold, he would not have paid gold for United States Bonds, whether on their face they were payable in gold or in currency. It is suggested that United States Bonds might have been sold for silver coin. Obviously the Government has never sold bonds and required payment in silver coin and it is not a practical operation. There is not enough silver coin in the country to pay for an issue as large as the First Liberty Loan issue called. The silver coin not in the Treasury is required for ordinary change throughout the country. Furthermore, the silver coin has a purely fictitious value in excess of the value of the silver contained in such coins,

and in effect is nothing but subsidiary currency. In 1869 it might have been possible for the Government to sell gold bonds and require payment in gold coin, thus obtaining the gold coin necessary to redeem the prior issue, but since the validity of the gold clause is in doubt, such bonds cannot be sold today.

We respectfully submit that Section 731 was intended to prevent exactly what the Government is now trying to do.

## Conclusion.

We submit that the decision of the Court of Claims denies "the validity of the public debt of the United States, authorized by law," and makes a mockery of the power of Congress "to borrow money on the credit of the United States."

Respectfully submitted,

ROBERT A. TAFT,
*Attorney for Petitioner.*